IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2017HCV03897

BETWEEN	**ALLAN HUNTER**	**1ST CLAIMANT**
AND	**OWEN SAUNDERSON**	**2ND CLAIMANT**
AND	**LEO OSBOURNE**	**3RD CLAIMANT**
AND	**GRANVILLE VALENTINE (General Secretary of the National Workers Union)**	**1ST DEFENDANT**
AND	**THE NATIONAL WORKERS UNION**	**2ND DEFENDANT**

IN CHAMBERS

Mr. Ravil Golding instructed by Lyncook, Golding & co. for the Claimants.

Mrs. Racheal Dibbs for the Defendants.

Heard: February 5, 2019

Jurisdiction – Whether claim should be struck out on basis that no Fixed Date Claim, date or first hearing has been issued – Whether Claimants can bring matter in their personal capacity against the trade union – Whether permission of the union or court is required to bring action – Whether derivative action – Civil Procedure Rules, Part 27.

HENRY-MCKENZIE, J (Ag)

[1] On March 15, 2019, I delivered an oral judgment and promised to give my reasons in writing. I now do so.

BACKGROUND

[2] The Claimants are purported members of the second Defendant, the National Workers Union (The Union) and the 1st Defendant is the General Secretary of the Union. By way of a Fixed Date Claim Form filed on November 15, 2017 along with Supporting Affidavits the claimants are seeking several orders:

1. *A declaration that the decision taken by the Election Committee of the National Workers Union the 2nd Defendant and the 1st Defendant Granville Valentine to hold a Special Congress of the National Workers Union on Saturday November 18, 2017 is unlawful, invalid, null and void in that it is contrary to the provisions of the constitution of the National Workers Union;*

2. *An Order to quash the decision of the Defendants through their servant or agent, the Election Committee to hold a Special Congress of the National Workers Union on November 18, 2017 as being contrary to the provisions of the constitution of the National Workers Union, the 2nd Defendant;*

3. *An Order to quash the decision of the Defendants through their servant or agent, the Election Committee to open nominations on Wednesday November 1, 2017 to Friday November 10, 2017 for the Post of President, Vice Presidents, Financial Secretary and Trustee of the second Defendant, the National Workers Union on the basis that the opening of such nomination is in breach of the provisions of the constitution of the 2nd Defendant.*

4. *An injunction restraining the Defendants, the Election Committee or their servants or agent from taking any*

steps whether directly or by way of their servants and or agents from acting or on implementing the decision to open nominations between November 1 to10, 2017 for post of President, Vice Presidents, Financial secretary and Trustees until the constitutional provisions of the 2nd Defendant have been complied with.

5. *An injunction restraining the Defendants, the Election Committee or their servants from taking any further steps or from holding a Special Congress of the National Workers Union, the 2nd Defendant on November 18, 2017 or any other date unless the constitutional provisions of the 2nd Defendant have been complied with.*

6. *Alternatively, a stay of the implementation of the decisions of the Defendants, the Election Committee, their servants and or agent to open nominations between November 1, 2017 to November 10, 2017 and to hold the Special Congress for the election of President, Vice Presidents, Financial Secretary and Trustees on November 18, 2017 or any other date pending the determination of this matter.*

7. *Any further or other relief.*

[3] These orders were also sought in an ex parte Notice of Application also filed on the 15th November 2017. The ex parte Notice was heard on November 16, 2017 with all parties and their counsel being present and an interim injunction was granted restraining the Defendants, the Election Committee or their servants or agents from holding a Special Congress of the National Workers Union as well as a requirement for the claimant to give an undertaking as to damages. The matter was adjourned to November 24, 2017 for hearing and subsequently to June 4th 2018 when the court extended the injunction and made orders for the filing of Affidavits in Reply, for an extension of time to file and serve written

submissions, for the filing of Answer for request for information and to refrain from publicizing any aspect of the matter. Counsel for both sides were again present on both occasions.

[4] On November 24, 2017 an Acknowledgement of Service was filed by the second Defendant in which it was stated that service of an unsealed fixed date claim form was effected on November 15, 2017. The Defendant has denied the claim and has indicated an intention to defend it. The Defendant filed Affidavits in response to the Affidavits in support of the fixed date claim form and Skeleton Submissions in this matter and also made request for information from the third claimant.

[5] On June 20, 2018, the Defendants filed a Notice of Application for Court Orders to Discharge Injunction and Strike out Claim. This is the application before me for consideration.

THE APPLICATION

[6] The application seeks specifically:

1. That the claim of the claimants be struck out and for a discharge of injunction obtained on November 16, 2017.
2. An extension of time for filing and serving of this application
3. Cost to the Defendants
4. Such other relief as this court deems just and reasonable.

[7] The main grounds of the application are stated as follows:

> *"1. Part 26 allows an application to be made by a party to strike out the statement of case;*
>
> *2. No Fixed Date Claim has yet been issued as at June 18 2018;*
>
> *3. Leave has not been sought to bring a derivative action;*

4.To date no claim nor any date or first hearing has been issued by the Court pursuant to Part 27, more than 8 weeks having passed since the hearing of the application for injunction, no undertaking having been made by the Claimants to issue a claim within any time period at all. Rule 17.2(3);

5. The Claimants personally, have applied for an injunction preventing the Defendants from holding a special congress to appoint officers, election of those officers is overdue.

6. The Claimants claim to be bringing this action in their personal capacities, for the benefit of the Defendant Union."

[8] Hearing of this application was set for November 15, 2018; however, it was adjourned to February 5, 2019. Among the orders made on November 15, 2018 was an extension of the Interim Injunction granted on November 16, 2017, to February 5, 2019.

[9] On February 5, 2019 the application came before me. With the consent of the parties, I discharged the interim injunction granted on November 16, 2017 with cost to the defendants to be taxed if not agreed and heard the application for the striking out of the Claimant's statement of case.

[10] I adjourned the application for the striking out of the claimants' statement of case until March 15, 2019 for decision.

DEFENDANTS' SUBMISSIONS

[11] The basis of the defendants' application to strike out the claim rests on two grounds. The first is that no fixed date claim, date or first hearing was issued by the Court and the defendants were not served within the six (6) months life cycle of the claim. Secondly, that the claimants did not seek permission to bring a derivative action, but instead brought the action in their personal capacity not having the requisite standing.

[12] Counsel for the defendants, Mrs. Rachael Dibbs, in making her submissions under this first ground, contended that the claim is invalid because to date no

fixed date claim form has been issued and served on the defendants, neither has any date or first hearing been issued by the Court. Counsel indicated that eight weeks has passed since the hearing of the application for injunction and the granting of an interim injunction and while the fixed date claim form is stamped, nothing else was done and no undertaking has been made by the claimants to issue a claim within any time period at all. The Defendant in making this argument relied on Part 27 of the Civil Procedure Rules (CPR) which specifies the procedure that should be adhered to when a fixed date claim is issued and the timelines that should be followed in relation to service. I will extract the relevant rules for ease of reference:

> *27.2 (1) "When a fixed date claim is issued the registry **must fix** a date, time and place for the first hearing of the claim.*
>
> *(2)That date shall be not less than four weeks nor more than eight weeks from the date on which the fixed date claim form is issued unless the court otherwise directs*
>
> *(3) The general rule is that the claimant **must serve** the fixed date claim form not less than 14 days before the first hearing."* **[My emphasis]**

Reference was also made by counsel for the defendants to rule 17.2(3).

Rule 17.2(3) reads:

> *17.2 (3) "Where the court `grants an interim remedy before a claim has been issued, it must require an undertaking from the claimant to issue and serve a claim form by a specified date."*

[13] Counsel then went on to state that the life cycle of a fixed date claim form is six (6) months and that nothing having been validly issued and served within that period, the claim has expired pursuant to the Civil Procedure Rules. In seeking to strengthen this point, she relied on the claimants' alleged acknowledgment that nothing was done in the matter for one year, giving further weight to her contention that no claim exists.

[14] Counsel further contends that the claimants' claim should be struck out on the basis that the **claim** was brought by the claimants in their personal capacity for the benefit of the Union which she argues the claimants have no enforceable right to do. She continued that the claim affects the membership of the Union as a whole making it a derivative action which requires permission to be first sought from the Union by those who are members and if refused from the Supreme Court. Counsel placed reliance in these submissions on the case of **Foss v Harbottle** [1843] 2 Hare 461.

[15] Counsel for the defendants argued further, that for the court to grant an application for derivative action it must be for any act that is ultra vires the constitution of the Union.

[16] She further added that none of the claimants has standing to bring this action as only the second claimant, Allan Hunter is a present member of the Union and he has produced nothing to show how this action to prevent Congress to elect officers is against the interest of the Union. In relation to Mr. Saunderson and Mr. Osbourne, she indicated that neither are members, having retired and not being a member since June 6, 2018 and September 19, 2015, respectively.

CLAIMANTS' SUBMISSIONS

[17] Counsel for the claimants, Mr. Ravil Golding, in response to the defendants' submission, in considering the question whether the claim can be struck out as not being valid because it was not sealed, argues that it ought not to be struck out because the sealing of the claim form depends on the registry as it is the duty of court officials, in particular, the administrative staff in the registry to seal the documents.

[18] Counsel further contended that the relevant documents were served on the defendants from November 2017, and as such, the defendants were aware of the matter and knew the cause of action. He also stated that the fact that the action

was in court and that the defendants had been taking part in the action by filing numerous affidavits in response to the claimants, the claim was validly issued.

[**19]** Counsel Mr. Golding in response to the defendants' arguments that this claim is a derivative action, said that nowhere in their affidavit or anywhere else, did the claimants assert that they were bringing the claim on behalf of any person other than themselves. He contends that it has been clearly stated that the claimants brought this action in their personal capacity. Further he argued that the rules of the Union as stated in its constitution is a private arrangement to which all members of the Union are agreed to be bound. He made reference in this regard to the recent decision of Pettigrew-Collins, J (Ag) in the related matter of **Leo Osbourne vs. Granville Valentine and the National Workers Union** [2018] JMSC Civ. (Draft judgment)

[20] In looking at the case of **Foss v Harbottle***,* counsel was of the view that this case does not apply in this situation. He distinguished **Foss v Harbottle** on the basis that the case was about a company which is a registered legal entity with separate legal persona, so that the individuals cannot bring an action on behalf of the company. He argued that the present matter has to do with a trade union which is more akin to a social club where the parties enter into a contract to act together. The Constitution contains the terms of the contract by which they agree to be bound, so that if the rules are not complied with by those having conduct of the union's affairs, any member of the union has a right to apply to the court by virtue of this private arrangement to compel the observation of the rules.

[21] He further stated that the defendants' submission that permission is required is unfounded. That whether the entity is a social club or a company, any member can bring an action where the social club or company has made a decision that is ultra vires its constitution and no permission is required from the entity or the court to bring such an action. As such, he contends that no permission is needed to bring this action as the manner in which the Union sought to conduct elections was ultra vires its Constitution.

[22] Finally, in bringing his argument to close, Counsel indicated that if members of the union could not bring a claim in their personal capacity, the Executive Council and the union could run amok and members could not go to court.

ISSUES

[23] Based on the grounds upon which the Defendants' application is made and the submissions made by Counsel, the two (2) main issues to be determined are as follows:

1. Whether the claimants' claim should be struck out on the basis that no fixed date claim, date or first hearing has been issued by the court.

2. Whether this claim against the trade union can properly be brought by the claimants in their personal capacity, or is the claim a derivative action requiring the permission of the union or the court before the suit can be brought.

APPLICABLE LAW

[24] The power of the court to strike out a claim is derived from rule 26.3(1) of the CPR. It states as follows:

> *(1) In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court—*
>
> *(b) that the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings;*
>
> *(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim.*
>
> *(d) that the statement of case or the part to be struck out is prolix or does not comply with the requirements of Parts 8 or 10.*

[25] From the wording above, it seems that the power of the court to strike out a claim is only available in certain designated circumstances and should only be a remedy of last resort. It is a discretionary power and should be exercised in plain and obvious cases. In the well-known case of **S & T Distributors Limited and S & T Limited v CIBC Jamaica Limited and Royal & Sun Alliance** SCCA 112/04 delivered 31st July, 2007, Harris JA accepted this as a settled legal position. She stated at page 29:

> *"The striking out of a claim is a severe measure. The discretionary power to strike must be exercised with extreme caution. A court when considering an application to strike out, is obliged to take into consideration the probable implications of striking out and balance them carefully against the principles as prescribed by the particular cause of action which is sought to be struck out. Judicial authorities have shown that the striking out of an action should only be done in plain and obvious cases."*

[26] According to the authors of **Halsbury's Laws of England**, 4th edition at paragraph 430, this discretionary power will…

> *"be exercised by applying two fundamental, although complementary, principles. The first principle is that the parties will not lightly 'be driven from the seat of judgment', and for this reason the court will exercise its discretionary power with the greatest care and circumspection, and only in the clearest cases. The second principle is that a stay or even dismissal of proceedings may 'often be required by the very essence of justice to be done', so as to prevent the parties being harassed and put to expense by frivolous, vexatious or hopeless litigation."*

[27] The power of the court to strike out a statement of case is also exercisable under the inherent jurisdiction of the court *"to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules,*

would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people." See: **Hunter v Chief Constable of the West Midlands Police,** [1982] AC 529 at 536, Lord Diplock**.**

[28] In the case **Trillian Douglas v Commissioner of Police [**2017] JMSC Civ 183 the court in discussing its power to strike out a statement of case, made reference to the case of **Yat Tung Investment Co. Ltd. v Dao Heng Bank** [1975] AC 581 at 590 where Lord Kilbrandon noted that in such an application to strike out, the court has a duty not to deny a litigant of his or her right to bring a claim before the court *'without scrupulous examination of all the circumstances'.*

DISCUSSION AND ANALYSIS OF LEGAL ISSUES

Whether the Claimants' claim should be struck out on the ground that no fixed date claim, date or first hearing has been issued by the court.

[29] The defendants allege that a fixed date claim, a date or first hearing has not been issued. The claimants have not responded to this allegation, but have disputed the allegation that the fixed date claim form was not served on the defendants. According to the claimants in the Affidavit of Service sworn by Patrick Gordon and filed on November 16, 2017, a "Sealed Copy Ex Parte Notice of Application for Court Orders, Fixed Date Claim Form, Affidavit of Leo Osbourne, Affidavit of Allan Hunter and Affidavit of Owen Saunderson" were served by him on an employee at the National Workers Union who identified herself as Dionne McDonald on November 15, 2017 at 4:15pm. She assured him the document would be handed over to the first defendant. The second defendant themselves acknowledged service of these documents but of an unsealed fixed date claim form.

[30] These issues being before the court, begs the question, what do the rules require in relation to service of the Fixed Date Claim Form. Is there a requirement for the

Fixed Date Claim to be affixed with the first hearing date and the seal of the court for it to be considered as being validly issued by the Court?

[31] From the wording of rule 27.2 of the CPR, it is mandatory for the registry in the court to fix a date, time and place for the first hearing on issuing of the fixed date claim. One of the main purposes of the Notice to the Defendant on a fixed date claim form is for the details regarding the first hearing to be filled in so that defendants on being served with the claim is aware of this fact. It is placed there intentionally and with great thought. In the case of **Chester Hamilton v Commissioner of Police** [2013] JMCA Civ 35 Harris JA in examining Rule 27. 2 looked on the meaning of "issue" under that section. She stated:

> *[36] "Rule 27.2 addresses the first hearing of fixed date claim forms generally, but refers to the registry fixing a date, time and place for the first hearing of the claim* ***when the fixed date claim form has been issued, meaning, as already stated, having been impressed with the seal of the court."*** **[My emphasis]**

[32] It is also obvious from the rule that after the date has been fixed, service must be effected on the defendant. There is however nothing precluding service of the Fixed Date Claim before such date has been fixed. However, it is my view that if the claimants have taken it upon themselves to effect service before the date has been fixed; there is a duty on them to produce a copy of fixed date claim with the hearing date affixed.

[33] The rules have also specified at 27.2(2) when such date must be fixed, giving the claimant an idea of the period when such hearing may take place. This places an additional duty on them to do due diligence and continuously check in with the court when the hearing will take place, if they themselves have failed to set a date.

[34] There is not only a requirement for the hearing date to be fixed, but also for the fixed date claim form to bear the seal of the court before it has been served

personally on each defendant. This point was repeated in various sections of the CPR, indicating the importance and weight attached to the court's seal.

Rules 5.1(2), 3.9(1), 8.1(1) and 8.13 state as follows:

> *5.1(2)* *The defendant **must be served** with a copy of the claim form **sealed by the court** in accordance with rule 3.9 (sealing of documents issued by court).*
>
> *3.9 (1)* *The court **must seal** the following documents on issue -*
>
> *(a) the claim form; and*
>
> *(b) all judgments, orders or directions of the Court.*
>
> *8.1(1)* *A claimant who wishes to start proceedings **must file** in the registry of the court at The Supreme Court, King Street, Kingston (or at such other place as the Rules Committee may determine) the original and **not less than one copy for each defendant (for sealing) of-***
>
> *(a) the claim form; and*
>
> *(b) …* **[My emphasis]**

[35] It is patently clear from the rules quoted above, that there is a mandatory requirement for a fixed date claim to be not only fixed with a date for the first hearing on being issued, but also sealed by the Court, before service on defendants. While the contention of counsel for the claimant is correct, that sealing is the duty of court officials, there is also a duty on the claimants or their counsel to ensure that the seal has been affixed by the court in doing their own due diligence in the matter.

[36] If the submission of the defendants is in fact accepted that no date for the first hearing has been issued, nor has the document been impressed with the seal of the court, then taking into consideration the mandatory nature of the words used

in the rules, it can be intimated that there is an absolute duty to adhere to it. Where there has been a failure to observe this mandatory rule, the fixed date claim form would be considered as not being validly issued by the court and thus not validly served within the 6 months life cycle of the claim. Per: CPR rule 5.1(2)

[37] In the case of **Vendryes v Keane** [2011] JMCA Civ 15**,** the Court of Appeal examined the meaning of the word "must" in the CPR. Harris JA stated at paragraph 12:

> *"Rule 8.16 (1) expressly specifies that, at the time of service, the requisite forms must accompany the claim form. The language of the rule is plain and precise.* ***The word "must', as used in the context of the rule is absolute. It places on a claimant a strict and an unqualified duty to adhere to its conformity****. Failure to comply with the rule as mandated, offends the rule and clearly amounts to an irregularity which demands that, in keeping with the dictates of rule 13.2, the default judgment must be set aside."* **[My emphasis]**

[38] While the court was examining a different rule in the CPR, by parity of reasoning, this principle can be applied to this case. Therefore, the use of the word 'must' in the above mentioned rules means absolute and unqualified.

[39] If the court were to accept that the claim form has been served in breach of the requirements laid down in the CPR for there to be a first hearing date fixed and seal being impressed, should the claim be struck out on this ground, considering all the circumstances of the case?

[40] The claimants submitted that the defendants were served with the documents on November 15, 2017 and had filed an acknowledgement of service indicating such. This point however does not assist the claimants as the fact that the defendants had filed an acknowledgment of service does not affect their right to

dispute the court's jurisdiction, rather, it is the first stage in disputing the court's jurisdiction. See CPR rules 9.2 and 9.5.

[41] Rule 9.6 provides that a defendant who wishes to dispute the court's jurisdiction or claim must file an acknowledgment of service and make the application raising the challenge within the time for filing a defence (42 days after date of service of claim form). The defendants have failed to contest the jurisdiction of the court within the time specified by the rules, but sought to do so in June 2018, several months after service had been effected on them, by an application to strike out claim.

[42] The rules specifically state at rule 9.6 (5) that a defendant who files an acknowledgment of service and does not make an application under this rule within the period for filing a defence, is treated as having accepted that the court has jurisdiction to try the claim.

[43] The fact that the defendants had at all stages participated in the proceedings by filing Affidavits in response to the claim and have been present at all hearings whether by themselves or through their Attorney-at-Law, can also be taken that they have acquiesced not only the court's jurisdiction, but to defending the claim on its merits and it will now be too late to successfully pursue their application to strike out the claim for being in breach of the Civil Procedure Rules, after such an act of submission/acquiescence, as occurred. In that regard, see **Johnson v Gore Wood and Co. –** [2002] 2 AC 1 and **Coca Cola Co. v Ketteridge** [2003] EWHC 2488 (Ch). In the circumstances, the defendants therefore are estopped from relying on this alleged breach or irregularity in the proceedings to have the claim struck out. Ground 1 of the application therefore fails.

Whether this claim against the Trade Union can be properly brought by the claimants in their personal capacity or is the claim a derivative action requiring the leave of the Union or the Court before the suit can be brought.

[44] In the case **Bonsor v Musicians' Union** [1956] A.C. 104, the court accepted that a registered trade union though not a juristic person or an incorporated body as a company, is capable of entering into contracts and to sue and be sued as a legal entity, distinct from its members for breaches of contract. The court in coming to this conclusion applied the cases of **Taff Vale Railway Co. v. Amalgamated Society of Railway Servants** [1901] A.C. 426; 17 T.L.R. 698; **Amalgamated Society of Carpenters, Cabinet Makers and Joiners v. Braithwaite** [1922] 2 A.C. 440; 38 T.L.R. 879 and **National Union of General and Municipal Workers v. Gillian** [1946] K.B. 81; 62 T.L.R. 46; [1945] 2 All E.R. 593.

[45] In **Bonsor**, the House of Lords upheld the right of a member to sue the trade union for damages as a result of him been wrongfully expelled from the union.

[46] Lord Morton of Henryton in **Bonsor** acknowledged that a member of a trade union has a right to sue his own union for acting ultra vires in the steps they had taken. Lord Porter agreed with this view and reasoned that if an entity has in certain respects an existence apart from its members then he fails to understand why that entity should not be sued by one of its members for a breach of contract.

[47] In making this point, Lord Morton looked at the case of **Yorkshire Miners' Association v Howden** [1905] AC 256 in which an individual member of a trade union got judgment against his union and some of its officials for an injunction restraining the application of the union's funds contrary to the rules of the association. He suggested that in this case the right of a member to bring an action against his union was not disputed. The Court had this to say in **Yorkshire Miners** at page 263.

> *"…if the action of the association, which was challenged by the plaintiff, was beyond the powers of the association, it seems clear, apart, of course, from any objection arising under the Act of 1871, that in an unincorporated society like this any single member suing alone would have a right to resist it and to call upon the Court to interpose by injunction."*

[48] The case of **Osborne v. Amalgamated Society of Railway Servants** [1911] 1 Ch. 540; 27 T.L.R. 289 ("the second Osborne case") was also examined and was determined on the ground that the union was acting ultra vires. In that case Mr. Osborne, who had been expelled from his union, brought an action against the union and its trustees to obtain reinstatement as a member on the ground that his expulsion was ultra vires and void. It was held by the Court of Appeal that the action was maintainable. Lord Morton was of the view that this case carries the matter a stage further, since the plaintiff was asserting his own rights against the union as a member, not to be wrongfully expelled; the second Osbourne case was approved by the House of Lords in **Braithwaite.**

[49] In the instant case, the relationship between members of the union and the union itself is governed by the National Workers' Union Constitution to which all members of the union have expressly agreed to be bound. This court finds that the constitution of the union is a private arrangement between the parties. Any breach of that arrangement can attract the intervention of the court.

[50] The defendants have argued that the claimants have no personal enforceable right to bring action against them to stop the Congress as the claim affects the membership of the union as a whole. It is evident from the cases mentioned above, that a member's right to bring an action against his union is not limited to circumstances where such action is being brought in the interest of the union, thus requiring the leave of the union or the Court. That right also encompasses a wider ambit of the members being able to enforce their own personal right as

members against the union, where there has been a breach of the contractual arrangement between them.

[51] Therefore, the case law bears reference to the fact that **Foss V Harbottle** relied on by the defendants' counsel, can be distinguished from the case at hand. In that case, two shareholders brought an action against the directors of the company, alleging impropriety on their part, arising from the misuse and misapplication of the company's assets. The Court rejected the shareholders' claim on the basis that a breach by the directors was a wrong against the company, for which only the company could bring an action.

[52] The general principle to be extracted from **Foss V Harbottle** is that shareholders have no separate cause of action in law for any wrong done to the company, neither do they have the right to bring an action against the company for any act ultra vires the regulations.

[53] As a matter of law, individual members of a trade union have standing to bring an action against it because of the private contractual arrangement between them grounded in the Constitution.

[54] In the instant case, I form the view that the claimants may not only have brought this action to protect any personal right they may have under the Constitution, but also in the interest of the union itself and its members, to curb actions they deem unauthorized by the Constitution of the union that may have an effect on the membership as a whole. But even if the claimants sole reason for this action were to promote the interest of the members as a whole as highlighted in the case of **Yorkshire Miners,** this would not preclude the claimants from bringing such an action. If the action of the union is unauthorized by the rules, any single member has a right to resist such actions and call upon the Court to intervene without seeking prior permission. I agree with the claimants that the need for permission is unfounded. Ground 2 of the Application therefore also fails.

CONCLUSION

[55] Having analysed the issues raised, I conclude as follows:

a. The defendants having submitted to the jurisdiction of the Court by not making an application within the time period stipulated by law for disputing the claim and by their act of participating in the matter by putting in an appearance and by filing affidavits and submissions, are estopped from relying on a breach of the rules of the Civil Procedure Rules (CPR) to have the claim struck out.

b. Any individual member can bring an action against the union for actions which they perceive are in contravention of its Constitution, without prior permission of the union or the Court.

DISPOSAL

[56] 1. The Notice of Application for Court Orders to strike out the Claim of the Claimants is dismissed.

2. Leave to Appeal is granted.

3. Cost to the claimants to be taxed if not agreed.

4. Claimants attorney - at - law is to prepare file and serve orders.